IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5939 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE TRADING CORPORATION OF INDIA LTD.

Versus

SUSHILA PREMJIBHAI MAJITHIYA

Appearance:

MR PM THAKKAR for Petitioner

MR HL RAVAL for Respondent No. 1, 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 13/04/2000

CAV JUDGEMENT

`One of the eternal conflicts out of which life is made up is that between the efforts of every man to get the most he can for his services, and that of a society, disguised under the name of Capital, to get his services for the least possible return. Combination on

the one side is patent and powerful. Combination on the other is necessary and desirable counter part, if the battle is to be carried on in a fair and equitable way'..Justice Holmes.

Heard the learned advocates appearing for the respective parties.

The brief facts of the present writ petition are that the respondents - two workmen namely Sushila Premjibhai Majithiya and Shardaben C. Katariya [Reference Nos. 67/83 & 68/83 respectively] were working with the petitioner-State Trading Corporation of India Limited [hereinafter referred to as, `the Corporation'] with effect from 4th December, 1980 and their services were illegally terminated by the petitioner-Corporation with effect from 25th June, 1982 and 30th June, 1982 respectively. Being aggrieved by the said orders of termination, both the workmen moved the Labour Court, Rajkot vide Reference Nos. 67/83 and 68/83 respectively and the Labour Court has decided both these references by a common Award dated 8th November, 1990.

Before the Labour Court, the respondents-workmen have filed statement of claim and the petitioner-Corporation has filed written statement vide Exh. 6 and thereafter the respondents-workmen Sushilaben was examined vide Exh. 17 and petitioner-Corporation had examined Madhanlal P. Vohra vide Exh. 32. Thereafter, the Labour Court has considered the oral as well as documentary evidence which were on record and came to the conclusion that while terminating the service of the respondents-workmen though both the workman had completed 240 days continuous service during the last twelve calender months, prior to their termination even though admittedly the petitioner-Corporation has not complied with the mandatory provisions of Sec. 25F of the Industrial Disputes Act, 1947 [hereinafter referred to as, `the Act'] and no notice or notice pay was given to the workmen and no retrenchment compensation were paid by the petitioner-Corporation to the respondents-workmen at the time of termination, and therefore, considering the fact that mandatory provisions have been violated by the petitioner-Corporation, the Labour Court has set-aside the termination orders and directed the petitioner-Corporation to reinstate the respondents-workmen on their original post alongwith full backwages from the date of their termination from service till their reinstatement in service, by an Order dated 8th November, 1990. The said award has been challenged by the petitioner-Corporation in the present writ

petition and the said petition has been admitted by this Court on 28.8.1991 by issuing Rule and granting ad-interim relief in terms of paragraph 6 (B) till 18th September, 1991. The said relief is extended from time to time by the order of this Court.

Learned advocate Mr. Thakkar appearing on behalf of the petitioner-Corporation has raised the contention that there was a fix time appointment given to the respondents-workmen and by the afflux of time, their services came to be terminated which does not amount to retrenchment, considering the provisions of Section 2 (oo) (bb) of the Act, and therefore, Section 25F has no application in the facts and circumstances of the present case and the Labour Court has committed gross error in granting relief as prayed for by the respondents-workmen. He further submitted that the respondents-workmen were engaged on daily wages, and therefore, they are not `workman' within the meaning of Section 2 (s) of the Act, and thus, Section 25F is not applicable to the present case. He further submitted that the Labour Court has committed gross error in coming to the conclusion that the respondents-workmen have completed continuous service of 240 days, and therefore, they are entitled to the benefit of Section 25-F of the Act and also committed error in granting reinstatement with continuity of service and full backwages for the interim period.

On the other hand, learned advocate Mr. H.L Raval appearing on behalf of the respondents-workmen has submitted that the Labour Court has given cogent finding of the fact, after considering the documentary as well as oral evidence which are available on record and therefore this Court cannot interfere with the finding of fact which has been given by the Labour Court. Mr. Raval further argued that this Court cannot reappreciate the evidence and finding given by the Labour Court. According to Mr. Raval, finding given by the Labour Court are based upon the evidence and there is not perverse or baseless finding which requires interference from this Court. He further submitted that considering the definition of `workman' under Section 2 (s) of the Act, daily wagers are covered and in respect to submission of periodical appointments of the respondents-workmen, Mr. Raval submitted that Section 2 (oo) (bb) came into force on 18th August, 1984 and said amendment has no application with retrospective date because both the respondents-workmen services were terminated by the petitioner-Corporation on 26th June, 1982 and 30th June, 1982 respectively and on that date, the said amendment of Section 2 (oo) (bb) was not in

force, and therefore, that contention cannot be considered by this Court because it is also not raised by the petitioner-Corporation before the Labour Court. He further pointed out that even in petition filed by the petitioner-Corporation, the said contention in respect to applicability of Sec. 2 (oo) (bb) has not been raised, and therefore, the same cannot be permitted to be raised before this Court for the first time, in absence of there being any contention raised in the petition.

I have considered the submissions made by both the learned advocates and have perused the entire award passed by the Labour Court. The Labour Court has discussed facts in detail of both the respondents-workmen and had also considered the oral evidence laid before it. After considering the oral as well as documentary evidence on record, the Labour Court in terms had come to the conclusion that all these documents are not disputed by the petitioner-Corporation and so it is proved on record that the workman Sushilaben has worked as a Junior Assistant in the petitioner-Corporation from 5th December, 1980 to 30th June, 1982 and similarly workman Sardaben was given appointment order on 9th March, 1981 to work as a Junior Assistant and the said appointment of the workman Sardaben was made for a maximum period of 89 days, and thereafter she continued to work upto 25th June, 1982 by various periodical orders given to the said workman concerned. By appointing her sometime for 89 days, sometime for 30 days and during that period, by various orders, she remained in service till 25th June, 1982. Therefore, considering these facts. Therefore, considering these facts and the evidence of Shri Madanlal Bohra, witness of the petitioner-Corporation, who admitted before the Labour Court in his deposition that both the workmen were working as `Rojamdar' in the petitioner-Corporation from 1980 to 1982 and they were called by the petitioner-Corporation whenever their work was needed by them. Mr. Bohra has also admitted in his deposition that the petitioner-Corporation use to give appointment orders for 30 days to 89 days to the workmen, according to their requirement and he also admitted that four workmen out of the workmen shown in the list Exh. 20, are in regular service with the petitioner-Corporation. It is also further admitted admitted by Mr. Bohra that petitioner-Corporation took 15 workmen out of the workman shown in the list at Exh. 20 because they were possessing the requisite qualification and they had accepted the award of the Court. In view of these facts, the Labour Court in paragraph 9 came to the conclusion that is is an admitted position on record that the workmen had worked for more

than 240 days during the last 12 calender months prior to they were discharged from service, and therefore, admittedly provision of Section 25F of the Act has been clearly violated, and therefore, the order of termination is void ab initio which is required to be set-aside. It was contended by the learned advocate appearing for the petitioner-Corporation that the respondents-workmen were appointed by the petitioner-Corporation purely on temporary basis and in the appointment orders it was specifically mentioned that the service of the respondents-workmen could be terminated by them on any date without assigning any reasons. This argument of the learned advocate of the Corporation has not been appreciated by the Labour Court by coming to the conclusion that once it is proved on record that the respondents-workmen had worked fore more than 240 days during the last twelve calender months prior to the date of their discharge from service, the respondents-workmen are entitled to the benefit of Section 25-F of the Industrial Tribunal Act, 1947.

In the matter between Bharat Heavy Electrical Limited v. R.V Krishna Rao, reported in 1989 (2) GLH p-1, the Division Bench of this Court has held that Section 2 (oo)(bb) has been incorporated by way of amendment on 18th August, 1984, and therefore, this amendment is not having any retrospective effect and it is held that it is impossible to hold that such a substantive exclusion provision was retrospective in nature. It is obvious that the legislature while enacting the said provision has not expressly made it retrospective. The Division Bench has also considered the decision of the Supreme Court in the case of Central Bank of India v. Their Workmen, AIR 1960 SC 12. Therefore, the contention which has been raised by Mr. Thakkar has not bearing as it has been decided by this Court that amended provision in Section 2 (oo)(bb) is made by the Legislature on 18th August, 1984 and sub-clause 2 (oo) (bb) has been incorporated which cannot have retrospective effect and admittedly the termination of these workmen were made in the year 1982, therefore, this contention cannot be well founded and it is answered by the Division Bench of this Court.

Now in respect to the second contention that the respondents-workmen being daily wagers, they are not `workmen' within the meaning of Section 2 (s) of the Act, learned advocate Mr. Thakkar has placed reliance upon the decision of the Apex Court in the matter between Himanshu Kumar Vidhyarthi v. State of Bihar, reported in AIR 1977 SC 3657. In the said decision, the Apex Court

has held that daily wage employee appointed on the basis of need of work, his termination of services cannot be construed to be retrenchment within the meaning of Section 25F of the I.D Act. But, there is another decision of the Apex Court in the matter of Ratansinh v. Union of India, reported in 1997 (11) SCC 396 wherein, the Apex Court has held that even daily rated employees are entitled to the benefit of Section 25F of the I.D Act and they are `workman' within the meaning of Section 2 (s) of the Industrial Disputes Act, 1947. Subsequently, the Apex Court in the matter of Pravinkumar Rain reported in 1998 (2) LLJ 674 has also considered the very same question that daily rated workman discharged their service without complying the provisions of Section 25-F of the Act are entitled to the protection of said Section 25-F of the Act. Even thereafter, in another decision of the Apex Court in the matter of All India Radio v. Santosh Kumar, reported in 1998 (78) FLR 814 wherein also the question of casual workers of All India Radio has been examined by the Apex Court and considering this aspect, it has been held that even in respect to the daily wager casual labour also, Section 25-F is required to be followed and if it is not followed and it is violated, then the order of termination is required to be set-aside and reinstatement with all benefits is required to be granted. Similarly, Division Bench of this Court has also considered the same issue in the matter of Rajniben Prabhatbhai v. Executive Engineer, Unja Irrigation Project Division, reported in 1998 (2) GLH (UJ) 16 wherein also, the question of daily wager has been examined by the Division Bench and relying upon the unreported judgment of this Court in Special Civil Application No. 813 of 1994 came to the conclusion that if daily wager has completed 240 days continuous service then provision of Section 25-F is required to be followed, which is mandatory in nature. There is another decision of Madhya Pradesh High Court, rendered by the Hon'ble Chief Justice Shri D.M Dharmadhikari, reported in 1998 (80) FLR p-54 [M.P Textool Corporation v. Krishnakant Pancholi] wherein, it has been held that even if employee engaged for meeting rush or overload of work or contingency, even then the provision of Section 25-F would be attracted and termination of service of such an employee without payment of retrenchment compensation would be void ab initio. In the said decision, it has been further held that provision of Section 25-F are applicable to all cadres of employees, including those employed on daily rated basis or for seasonal work or intermediate nature. All cadres of employees putting in more than 1 year of continuous service are entitled to payment of retrenchment compensation as a condition

precedent for their retrenchment under Section 25-F of the Industrial Disputes Act, 1947.

In yet another decision of the Labour Appellate Tribunal of India in case of Chopra Motors v. Their Workmen, 1957 (2) LLJ 162, it is held that it is clear that Section 25-F gives no positive and unregulated right of retrenchment to the employers. It is a condition precedent before making the retrenchment of an employee. It is not worthy that the language of Section 25-F is couched in a negative form. The Section does not expressly provide that on the compliance of the three conditions referred to in the Section, the employer shall have an unrestricted right to retrech the workman. In awarding compensation even in cases of unjustified retrenchment, the scale laid down in Section 25-F must be adopted. No distinction could be made in the matter of compensation between the justified and unjustified retrenchment.

Thus, in light of the aforesaid decisions, the contention raised by Mr. Thakkar that the workmen were daily rated employees and therefore the same were not covered within the meaning of Section 2 (s) of the Act, is required to be rejected.

Now the contention which has been raised by Mr. Thakkar that the Labour Court has committed gross error in granting reinstatement with continuity of service and full backwages, in such a situation when the condition precedent of Section 25-F is not followed, then consequently and naturally, the result is that the termination order passed by the employer is considered to be ab initio void and workmen are entitled to full relief of reinstatement with continuity of service and full backwages for the interim period unless the exceptional circumstances can be justified by the employer for denying the claim of backwages. The following decisions are required to be considered :

(a) Haresh Kumar J. Pandit v. Deputy Executive Engineer, Dhoraji [1990 (2) GLH (UJ) 3.

(b) M.P. Ramanand v. Gujarat State Ware Housing Corporation Limited [1985 (2) GLR 1040].

(c) Gram Panchayat, Dhamnagar v. Sharad Kumar D. Acharya, 1994 (1) GLR 579

(d) Veternary Officer & Another v. Rajendra Sinh R. Jala, 1998 (1) GLR p110.

Recently, the Apex Court in the case of Management, MCD v. Premchand Gupta and Another, reported in AIR 2000 SC p-454 has held that considering the fact that workman continued to work on vacant permanent post and completed not less than 240 days of continuous service in one calender year immediately preceding the impugned termination order, therefore, the termination amounts to retrenchment and non-payment of retrenchment compensation which resulted into termination is null and void and workman is entitled to consequential and natural reliefs.

Considering the above well-established law on the subject of Section 25-F of the Industrial Disputes Act, 1947, I am of the view that the Labour Court has not committed any error while coming to such a conclusion that even in case of daily wagers or an employee who was appointed on periodical basis, there is a clear finding of fact based on oral as well as documentary evidence laid before the Labour Court that both the workmen had completed 240 days continuous service during the last 12 calender months prior to their date of termination and admittedly, no notice or notice pay and/or retrenchment compensation was paid to both the workmen at the time of termination of their services, and therefore, the finding which has been given by the Labour Court is quite legal, valid and proper which does not require any interference from this Court. The Labour Court has also rightly granted consequential and natural reliefs of reinstatement with continuity of service with full backwages for the interim period as the petitioner-Corporation has not proved gainful employment of both the workmen during the interim period and there was no evidence at all on record which justify the denial of backwages. Therefore, according to my opinion, the Labour Court has not committed any error. It is very well reasoned order passed on finding of fact and findings given by the Labour Court is also based on evidence. It is not perverse and/or baseless. It is also not finding which is contrary to the record and there is no miscarriage of justice and there is also no error of law or facts which require any interference at the hands of this Court while exercising the powers under Art. 226 & 227 of the Constitution of India. And therefore, according to my opinion, this petition have no merits, and the same therefore deserves to be dismissed. Accordingly, this petition is dismissed. Rule is discharged. No order as to costs. Ad-interim relief

granted earlier stands vacated.

In view of the fact that services of both the workmen came to be terminated in the year 1982, the dispute came to raised in the year 1983, and the Award passed by the Labour Court is dated 8th November, 1990 and the present Special Civil Application is filed by the petitioner Corporation on 26th December, 1990 and ad-interim relief has been granted by this Court on 28th August, 1991, which is in operation, for more than 9 years in the present proceedings, the workmen are without job, and therefore, considering these facts and circumstances, I am directing the petitioner-Corporation to reinstate both these workmen in service with continuity of service and full backwages from the date of termination till the date of reinstatement in service. The petitioner Corporation is directed to reinstate both the respondent workmen in service within a period of one month from the date of receipt of certified copy of this judgment and shall arrange to pay full backwages to the respondents-workmen from the date of their termination till their reinstatement in service with appropriate upward revision of pay and perks implemented by it from time to time. The payment of backwages shall be made by the petitioner-Corporation to the respondents-workmen within a period of three months from the date of receipt of certified copy of this judgment.

{H.K Rathod, J.}

Prakash*